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August 21, 1992

Michael J. Duncan
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Dear Mike,

At long last I have the opportunity to write you concerning your Amendment 2 paper. First, let me congratulate you--you did a great job. I was particularly impressed with the language in the paragraphs I marked with a "*"; those paragraphs are "campaign slogan" quality! And, I like your parallel to the racial discrimination of the '50s.

Second, my own personal opinion is that there is more mileage to be gained from an emphasis on the "claim of discrimination" language and the discriminatory intent (and effect) of this language, rather than the unconstitutionality of the proposed amendment. Examples that impact on people's lives probably leave the most lasting impression. Job discrimination (which you address), housing discrimination, and public accommodations discrimination help to bring home the point that Amendment 2 really can make a (negative) difference to people in everyday life.

Amy and I did up a letter to the editor yesterday on the subject of Amendment 2. Maybe it will be in the Gazette Telegraph shortly.

I am enclosing a draft paper I am working on for the Amendment 2 issue. Although it is only a draft (and incomplete besides), it may give you an idea of my thinking.

Hope this helps. Best wishes.

Sincerely,

Douglas Triggs
Attorney at Law

DT:bs

Enc.

George Orwell understood the power of words, as does the local organization, Coloradans for Family Values. Coloradans for Family Values (CFV) has introduced a ballot initiative to amend our state constitution.

The true meaning of the ballot initiative demonstrates the power, and the ambiguity of words. CFV claims that its proposed Amendment 2 simply denies gays and lesbians special protection under the law, that it is not anti-gay, and that it is not their intent to discriminate against anyone.

Opponents, including the Equal Protection Campaign (EPOC), say that it is truly an anti-gay measure. The words, standing alone, fail to resolve that question. The proposed amendment would prohibit the state, and other agencies or governments within the state from passing or enforcing

> . . . any statute, regulation, ordinance or policy whereby homosexual, lesbian, or bisexual orientation, conduct, practices or relationships shall constitute . . . or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination.

Although using words which support the claim that the amendment's intent is only to deny preferential treatment, a closer look reveals a power to go far beyond such a limited objective. A closer look shows that the words *family values* are little more than camouflage, hiding an attempt to deprive people of their legal rights, hiding discrimination.

The amendment could deny gay people, or even heterosexual people, the right to litigate "a claim of discrimination" if that claim related to "homosexual, lesbian, or bisexual orientation, conduct, practices or relationships." That means that an employer could fire virtually anyone by saying the employee is gay. That is probably not a major change to existing law, as it appears that absent some law to the contrary, such as those passed in Aspen, Boulder, and Denver, an employer generally has that right

The general rule is known as *employment at will*, under which an employer could fire an employee for any reason, or even for no reason. Many employees work under conditions where the employment at will doctrine is legally modified, whether by a collective bargaining agreement, by an employment contract, or perhaps by an employee handbook or manual. The proposed Amendment 2 would seem to extend beyond the claimed denial of special protection or status, to take away protection now enjoyed by many workers, regardless of race, sex, or sexual orientation.

Amendment 2 seems to conflict with certain provisions of the Colorado Constitution. Like the United States Constitution, our Colorado Constitution has its own Bill of Rights. Article II, Section 6, Equality of Justice, provides, "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property, or character; and right and justice should be administered without sale, denial or delay."

Amendment 2 appears to limit the access of "every person" to our courts; it appears to foreclose "a speedy remedy . . . for

every injury." Perhaps CFV should tell you that its Amendment 2 will limit existing constitutional protections.

Amendment 2 also attacks Art. II, Section 3 of the Colorado Constitution, Inalienable Rights. "All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; or acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness."

Equally disappointing, Amendment 2 attacks certain fundamental rights guaranteed us by the United States Constitution. The 14th Amendment provides,

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

By denying gays access to the courts, Amendment 2 violates the 14th Amendment to the United States Constitution, as well as certain provisions of Colorado's own Bill of Rights.

Amendment 2 originated in Colorado Springs, a community generally perceived as "conservative." However, that conservative label need not be equated with intolerance. This community has the opportunity, and the duty to stand up, speak out, and defeat a ballot initiative that, if passed, will embarrass this state in the federal courts, and will embarrass the community in which it originated. *

That Amendment 2 originated in our community is rather ironic and unfortunate, given that 30 years ago, the Colorado

Springs Board of Realtors joined in a suit seeking to prevent enforcement of the Colorado Fair Housing Act of 1959. In other words, the local board of realtors fought for racial discrimination. Luckily, Colorado's Supreme Court denied the challenge, and came down on the side of Fair Housing. Thirty years later, another organization is once again fighting on the side of discrimination.

Supporters of Amendment 2 say that it would do no more than deny gay people special or minority status. First, the need for such a bill is dubious, as only three communities in the state now make it illegal to discriminate against gays; Aspen, Boulder, and Denver all have passed such legislation. Second, in light of applicable provisions of the Colorado and United States Constitutions, it is likely that the bill would take away existing protections.

CFV, masquerading under the label *Family Values,* has demonstrated the power of words. The values apparent beneath the surface of Amendment 2 are hatred and intolerance, certainly not values taught in most families.] *

Vote NO to Amendment 2 this November 3.